

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Robert L. Bratzler et al.
Serial No.: 09/776,479
Confirmation No.: 7139
Filed: February 2, 2001
For: IMMUNOSTIMULATORY NUCLEIC ACIDS FOR THE TREATMENT
OF ASTHMA AND ALLERGY
Examiner: N. M. Minnifield
Art Unit: 1645

Certificate of Electronic Filing Under 37 CFR 1.8

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being transmitted via the Office electronic filing system in accordance with § 1.6(a)(4).

Dated: June 8, 2009

Signature: Nicole Millette Lapomardo (Nicole Millette Lapomardo)

Mail Stop Issue Fee
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Madam:

APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR §1.705

In accordance with 37 CFR §1.705(b), Applicant requests reconsideration of the patent term adjustment (“PTA”) for U.S. Application No. 09/776479 (“the ‘479 Application”). Applicant provides, below, a statement of the facts involved, specifying the correct PTA and the bases under 37 CFR §1.702 for the adjustment, the relevant dates for which adjustment is sought, and the adjustment to which the patent is entitled.

1. On March 6 2009, the U.S. Patent and Trademark Office (“USPTO”) mailed a Notice of Allowance and Determination of Patent Term Adjustment (Exhibit 1) for the ‘479 Application, which indicated that the ‘479 Application was entitled to a PTA of 0 days.

2. According to the Patent Term Adjustments page (Exhibit 2) of the Patent Application Information Retrieval (PAIR) system, the USPTO accorded the ‘479 Application a PTA of 330 days for delays that occurred at the USPTO, but reduced the PTA to 0 days because Applicant had allegedly incurred 596 days of delay.

3. Applicant submits that the correct PTA should be 647 days, which is the net USPTO delay of 1330 days minus the apparent net Applicant delay of 683 days.

4. The difference between what Applicant submits is the correct PTA (647 days) and what the Notice of Allowance and Determination of Patent Term Adjustment states is the PTA (0 days) results, in part, from the USPTO's failure to issue the '479 Application within three years of its actual filing date, i.e. by February 2 2004. *See* 35 U.S.C. § 154(b)(1)(B). Applicant filed a Request for Continued Examination (RCE) on October 30 2006 which resulted in an exclusion of time from that date forward. *See* 35 U.S.C. § 154(b)(B)(i). The period of delay thus began on the first day following the three year period, February 3 2004, and ended on October 30 2006, and resulted in a USPTO delay of 1000 days. The USPTO has not included this delay in its calculation of the PTA shown in the PAIR system.

5. The difference also results, in part, from the submission of a series of Information Disclosure Statements on November 24 2008, November 28 2008 and February 23 2009. If considered to be supplemental replies, these submissions may result in Applicant delay of 94 days (period from November 21 2008 to February 23 2009). *See* 37 CFR § 1.704(c)(8). Only 7 days of delay (for the period from November 21 2008 to November 28 2008) were included on the PTA page of PAIR.

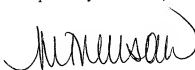
6. A terminal disclaimer was not filed in the '479 Application and the '479 Application is not subject to a terminal disclaimer.

Conclusion

Based on the foregoing, Applicant respectfully requests that the correct PTA should be at least 647 days and not 0 days as listed in the Notice of Allowance and Determination of Patent Term Adjustment.

Applicant submits \$200.00, which is the fee set forth in 37 CFR § 1.18(e) for filing an application for PTA. If there is any additional fee occasioned by this application and request that is not covered by the enclosed fee, please charge any deficiency to Deposit Account No. 23/2825.

Respectfully submitted,



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617.646.8000

Date: June 8, 2009
x06.08.09

EXHIBIT 1
UNITED STATES PATENT AND TRADEMARK OFFICEUNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P. O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|----------------------|------------------|
| 09/776,479 | 02/02/2001 | Robert L. Bratzler | C10377/013 (HCL/MAT) | 7139 |

7590 03/06/2009

Helen C. Lockhart
c/o Wolf Greenfield & Sacks, P.C.
Federal Reserve Plaza
600 Atlantic Avenue
Boston, MA 02210

EXAMINER

MINNIFIELD, NITA M

ART UNIT

PAPER NUMBER

1645

DATE MAILED: 03/06/2009

Determination of Patent Term Adjustment under 35 U.S.C. 154 (b)

(application filed on or after May 29, 2000)

The Patent Term Adjustment to date is 0 day(s). If the issue fee is paid on the date that is three months after the mailing date of this notice and the patent issues on the Tuesday before the date that is 28 weeks (six and a half months) after the mailing date of this notice, the Patent Term Adjustment will be 0 day(s).

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) WEB site (<http://pair.uspto.gov>).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (571)-272-7702. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at 1-(888)-786-0101 or (571)-272-4200.

EXHIBIT 2

| | | |
|------------|---|----------------------|
| 09/776,479 | IMMUNOSTIMULATORY NUCLEIC ACIDS FOR THE TREATMENT OF ASTHMA AND ALLERGY | 06-08-2009::09:47:31 |
|------------|---|----------------------|

Patent Term Adjustments

Patent Term Adjustment (PTA) for Application Number: 09/776,479

| | | | |
|------------------------------|------------|--------------------------------------|-----|
| Filing or 371(c) Date: | 02-02-2001 | USPTO Delay (PTO) Delay (days): | 330 |
| Issue Date of Patent: | - | Three Years: | - |
| Pre-Issue Petitions (days): | +0 | Applicant Delay (APPL) Delay (days): | 596 |
| Post-Issue Petitions (days): | +0 | Total PTA (days): | 0 |
| USPTO Adjustment(days): | +0 | Explanation Of Calculations | |

Patent Term Adjustment History

| Date | Contents Description | PTO(Days) | APPL(Days) |
|------------|---|-----------|------------|
| 03-06-2009 | Mail Notice of Allowance | | |
| 02-23-2009 | Information Disclosure Statement (IDS) Filed | | |
| 02-17-2009 | Document Verification | | |
| 08-15-2008 | Examiner Interview Summary Record (PTOL - 413) | | |
| 02-17-2009 | Notice of Allowance Data Verification Completed | | |
| 11-28-2008 | Information Disclosure Statement considered | | |
| 11-24-2008 | Information Disclosure Statement considered | | |
| 11-28-2008 | Reference capture on IDS | | |
| 11-28-2008 | Information Disclosure Statement (IDS) Filed | | 7 |
| 11-24-2008 | Reference capture on IDS | | ⬆ |
| 11-24-2008 | Information Disclosure Statement (IDS) Filed | | ⬆ |
| 12-04-2008 | Date Forwarded to Examiner | | ⬆ |
| 11-21-2008 | Response after Non-Final Action | | ⬆ |
| 11-28-2008 | Information Disclosure Statement (IDS) Filed | | |
| 11-24-2008 | Information Disclosure Statement (IDS) Filed | | |
| 09-15-2008 | Miscellaneous Incoming Letter | | |
| 08-21-2008 | Mail Non-Final Rejection | | |
| 08-18-2008 | Non-Final Rejection | | |
| 11-05-2007 | Information Disclosure Statement considered | | |
| 06-03-2008 | Date Forwarded to Examiner | | |
| 04-24-2008 | Response after Non-Final Action | | 96 |
| 04-24-2008 | Request for Extension of Time - Granted | | ⬆ |
| 11-05-2007 | Reference capture on IDS | | ⬆ |
| 11-05-2007 | Information Disclosure Statement (IDS) Filed | | ⬆ |
| 11-05-2007 | Information Disclosure Statement (IDS) Filed | | ⬆ |
| 10-19-2007 | Mail Non-Final Rejection | | ⬆ |
| 10-15-2007 | Non-Final Rejection | | |
| 07-30-2007 | Date Forwarded to Examiner | | |
| 07-23-2007 | Response after Non-Final Action | | 95 |
| 07-23-2007 | Request for Extension of Time - Granted | | ⬆ |
| 01-19-2007 | Mail Non-Final Rejection | | ⬆ |

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|------------|---|----|
| 01-08-2007 | Non-Final Rejection | |
| 11-06-2006 | Date Forwarded to Examiner | |
| 11-06-2006 | Date Forwarded to Examiner | |
| 10-30-2006 | Request for Continued Examination (RCE) | 95 |
| 11-06-2006 | DISPOSAL FOR A RCE/CPA/129 (express abandonment if CPA) | ↑ |
| 10-30-2006 | Request for Extension of Time - Granted | ↑ |
| 10-30-2006 | Workflow - Request for RCE - Begin | ↑ |
| 04-27-2006 | Mail Final Rejection (PTOL - 326) | ↑ |
| 04-26-2006 | Final Rejection | |
| 01-30-2006 | Date Forwarded to Examiner | |
| 01-09-2006 | Response after Non-Final Action | 95 |
| 01-09-2006 | Request for Extension of Time - Granted | ↑ |
| 07-06-2005 | Mail Non-Final Rejection | ↑ |
| 06-27-2005 | Non-Final Rejection | |
| 04-15-2005 | Date Forwarded to Examiner | |
| 04-06-2005 | Response after Non-Final Action | 61 |
| 04-06-2005 | Request for Extension of Time - Granted | ↑ |
| 11-04-2004 | Mail Non-Final Rejection | ↑ |
| 11-01-2004 | Non-Final Rejection | |
| 08-25-2004 | Date Forwarded to Examiner | |
| 08-18-2004 | Response to Election / Restriction Filed | |
| 08-18-2004 | Workflow incoming amendment IFW | |
| 07-14-2004 | Mail Restriction Requirement | |
| 07-12-2004 | Requirement for Restriction / Election | |
| 04-09-2004 | Date Forwarded to Examiner | |
| 03-29-2004 | Response after Non-Final Action | 95 |
| 03-29-2004 | Request for Extension of Time - Granted | ↑ |
| 02-17-2004 | IFW Amended case processing Complete | ↑ |
| 01-27-2004 | Miscellaneous Incoming Letter | ↑ |
| 12-29-2003 | Mail-Petition Decision - Granted | ↑ |
| 07-11-2003 | Petition Entered | ↑ |
| 07-17-2003 | Reference capture on IDS | ↑ |
| 07-17-2003 | Information Disclosure Statement (IDS) Filed | 17 |
| 07-17-2003 | Information Disclosure Statement (IDS) Filed | |
| 09-25-2003 | Mail Non-Final Rejection | ↑ |
| 09-22-2003 | Non-Final Rejection | ↑ |
| 07-15-2003 | Case Docketed to Examiner in GAU | ↑ |
| 07-07-2003 | Date Forwarded to Examiner | ↑ |
| 06-30-2003 | Response to Election / Restriction Filed | 35 |
| 06-30-2003 | Request for Extension of Time - Granted | ↑ |
| 02-26-2003 | Mail Restriction Requirement | |

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| | | |
|------------|---|---|
| 02-24-2003 | Requirement for Restriction / Election | ⬆ |
| 02-24-2003 | Application Return from OIPE | ⬆ |
| 08-21-2002 | Application Is Now Complete | ⬆ |
| 07-29-2002 | CRF Disk Has Been Received by Preexam / Group / PCT | ⬆ |
| 07-29-2002 | A statement by one or more inventors satisfying the requirement under 35 USC 115, Oath of the Applicant | ⬆ |
| 08-12-2002 | CRF Is Good Technically / Entered into Database | ⬆ |
| 06-18-2002 | Notice Mailed--Application Incomplete--Filing Date Assigned | ⬆ |
| 06-18-2002 | Pre-Exam Office Action Withdrawn | ⬆ |
| 05-15-2002 | Application Return TO OIPE | ⬆ |
| 03-20-2002 | X-Pre-Legal Complete Amended Case | ⬆ |
| 01-14-2002 | Information Disclosure Statement (IDS) Filed | ⬆ |
| 01-14-2002 | Information Disclosure Statement (IDS) Filed | ⬆ |
| 01-08-2002 | Preliminary Amendment | ⬆ |
| 02-28-2002 | X-Pre-Legal Complete New Case | ⬆ |
| 02-28-2002 | Case Docketed to Examiner in GAU | ⬆ |
| 01-31-2002 | Application Dispatched from OIPE | ⬆ |
| 01-29-2002 | Application Is Now Complete | ⬆ |
| 10-11-2001 | Notice Mailed--Application Incomplete--Filing Date Assigned | ⬆ |
| 10-10-2001 | Correspondence Address Change | ⬆ |
| 10-09-2001 | Case Found | ⬆ |
| 10-09-2001 | Termination of Official Search | ⬆ |
| 10-03-2001 | Official Search Conducted | ⬆ |
| 10-03-2001 | Case Reported Lost | ⬆ |
| 02-23-2001 | IFW Scan & PACR Auto Security Review | ⬆ |
| 02-02-2001 | CRF Disk Has Been Received by Preexam / Group / PCT | ⬆ |
| 02-02-2001 | Initial Exam Team nn | ⬆ |

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